Public Prosecutor v Ooi Wang San

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO A-05-32 OF 1996
SHAIK DAUD, ABDUL MALEK AHMAD AND MOKHTAR SIDIN JJCA
14 MAY 1998

Criminal Procedure *— Sentence — Concurrent or consecutive — Respondent sentenced to 10 years' imprisonment to begin from date sentence passed — Already serving prison sentences for previous convictions — Exercise of court's discretion — Whether court considered public interest — Whether sentence commensurate with offence — Criminal Procedure Code (FMS Cap 6) s 292*

The respondent and three others were charged before the High Court for an offence of murder. They later pleaded guilty to an amended charge under s 304 read with s 34 of the Penal Code (FMS Cap 45). After recording the facts of the case and after hearing pleas of mitigation on behalf of all four, the High Court judge sentenced them to 10 years' imprisonment. As the respondent was serving prison sentences for previous offences, the High Court judge ordered the 10-year sentence to begin from the date the sentence was passed. The Public Prosecutor appealed against the sentence imposed by the High Court.

Held, allowing the appeal:

Section 292 of the Criminal Procedure Code (FMS Cap 6) gives a discretion to the court, depending on the facts and circumstances of each particular case, whether to order the commencement of the sentence on such convicted persons, either immediately or at the expiration of the imprisonment to which he has been previously sentenced. In this case, the court sentenced the respondent to 10 years to take effect from the date of the sentence on 4 April 1996. Since he was due to be released in the year 2001, there would be an overlap of several years. This did not reflect the gravity of the offence. Furthermore, the present offence was serious and that it occurred in prison. The respondent also had previous convictions most of which were offences involving violence. On the facts and circumstances of this case, public interest demands a custodial sentence to commensurate with the offence. Therefore, the sentence of 10 years' imprisonment imposed on the respondent ought to take effect after he had served his present sentences for other offences (see p 768A–E).

[Bahasa Malaysia summary

Penentang dan tiga orang lain telah dipertuduhkan di hadapan Mahkamah Tinggi untuk kesalahan membunuh. Mereka kemudiannya mengaku salah kepada pertuduhan terpinda di bawah s 304 dibaca dengan s 34 Kanun Keseksaan (NMB Bab 45). Selepas merekodkan fakta-fakta kes dan selepas mendengar rayuan peringanan bagi pihak

keempat-empat orang, hakim Mahkamah Tinggi menjatuhkan hukuman pemenjaraan 10 tahun. Oleh kerana penentang masih menjalani hukuman penjara untuk kesalahan dahulu, hakim Mahkamah Tinggi memerintahkan supaya hukuman 10 tahun bermula dari tarikh ia dijatuhkan. Pendakwa Raya merayu terhadap hukuman yang dikenakan oleh Mahkamah Tinggi. A B

Diputuskan, membenarkan rayuan:

Seksyen 292 Kanun Acara Jenayah (NMB Bab 6) memberikan budi bicara kepada mahkamah, bergantung kepada fakta-fakta dan keadaan-keadaan setiap kes tertentu, sama ada untuk memerintah permulaan hukuman atas orang yang disabit demikian, sama ada dengan serta merta atau apabila tamatnya pemenjaraan yang dikenakan lebih awal terhadapnya. Dalam kes ini, mahkamah menjatuhkan hukuman 10 tahun ke atas penentang mulai dari tarikh hukuman pada 4 April 1996. Oleh kerana dia akan dibebaskan pada tahun 2001, akan terdapat pertindihan beberapa tahun. Ini tidak membayangkan keseriusan kesalahan. Tambahan pula, kesalahan ini adalah serius dan bahawa ia berlaku di penjara. Penentang juga mempunyai sabitan terdahulu yang mana kebanyakannya adalah kesalahan yang melibatkan keganasan. Atas fakta-fakta dan keadaan-keadaan kes ini, kepentingan awam menuntut hukuman tahanan supaya setimpal dengan kesalahan. Maka, hukuman penjara 10 tahun yang dikenakan terhadap penentang sepatutnya mula berkuatkuasa selepas dia telah menjalani hukumannya sekarang untuk kesalahan-kesalahan lain (lihat ms 768A–E).] C D E

[*Editorial note*: The respondent has appealed to the Federal Court vide Criminal Appeal No 05–6–1998(A).] F

Notes

For cases on concurrent or consecutive sentences, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2292–2317. G

Legislation referred to

Criminal Procedure Code (FMS Cap 6) s 292
Penal Code (FMS Cap 45) ss 34, 302, 304

H

Appeal from: Criminal Trial No 55–3 of 1995 (High Court, Taiping)

Zauyah Be bte Loth Khan (Deputy Public Prosecutor) for the appellant.
Awtar Singh (*Awtar Singh & Co*) for the respondent.

Shaik Daud JCA (delivering judgment of the court): This was an appeal by the Public Prosecutor against sentence imposed by the High Court against the respondent Ooi Wang San and three others. I

The respondent and three others were originally charged before the Taiping High Court on 13 November 1995 for an offence of murder under s 302 read with s 34 of the Penal Code (FMS Cap 45) ('the Code'). When the matter was mentioned on 4 April 1996, the respondent and three others pleaded guilty to an amended charge under s 304 (first limb) read with s 34 of the Code.

After recording the facts of the case, and after hearing pleas of mitigation on behalf ofall four, the learned High Court judge sentenced them as follows:

> 10 years' imprisonment on all four (including Ooi Wang San) but in the case of Ooi Wang San and another, Rajendran a/l Dramalingam, as they are now undergoing prison sentences for another offence, the sentence is to begin from today and as for the other two, sentence is to take effect from their date of arrest.

After hearing submissions by the learned deputy public prosecutor and learned counsel Mr Awtar Singh, we allowed the appeal and ordered that the 10 years' imprisonment imposed on all four is to take effect after the expiry of the sentences they all are now serving for various other offences.

The respondent Ooi Wang San, not being satisfied with our decision, has now appealed to the Federal Court.

As mentioned above, Ooi Wang San with three others pleaded guilty to an amended charge under s 304 (first limb) read with s 34 of the Code for causing the death of one Jolianos a/l Joseph on 8 July 1995 at about 2pm in Taiping prison. The facts as given by the prosecution showed that on 8 July 1995 at about 2pm, while some 170 prisoners from Block B of Taiping Prison and 263 prisoners from Block C were enjoying their recreation period, there occurred a commotion involving Ooi Wang San, the three others and the deceased. The four of them were seen to attack the deceased. The deceased was seen running away covered with blood and being chased by the four assailants who were armed with some kind of sharp instruments. The warders managed to stop the four when the deceased fell to the ground covered in blood. Eventually all four were disarmed. The deceased succumbed to his injuries at 4pm the same day. Investigations revealed that all the four sharp instruments used to attack the deceased were all made in the prison workshops. Post mortem examinations revealed that the deceased had several stab wounds, one of which penetrated his chest and lacerated his right lung. The cause of death was 'lung laceration with lung collapse with haemothorax causing hyporolemic shock'. Investigations also revealed that the attack on the deceased was as a result of revenge against the deceased who had, on 1 June 1995, stabbed one of the four and another person called Mohan a/l Lingam, a friend of the four.

Learned counsel for Ooi Wang San in mitigation submitted that he was 39 years of age, married with three children and he was then undergoing a term of imprisonment for another offence which term was due to end in the year 2001 and prayed for a light sentence to take effect from the date of his arrest.

The law on the commencement of sentences of imprisonment on

prisoners already undergoing imprisonment, as in this case, is provided for in s 292 of the Criminal Procedure Code (FMS Cap 6). This provision gives a discretion to the court, depending on the facts and circumstances of each particular case, whether to order the commencement of the sentence on such convicted persons, either immediately or at the expiration of the imprisonment to which he has been previously sentenced.

In the case of Ooi Wang San, the court sentenced him to 10 years to take effect from the date of the sentence, ie 4 April 1996. Since he was due to be released in the year 2001, there would be an overlap of several years. This to our mind certainly did not reflect the gravity of the offence. Furthermore, he had some 13 previous convictions dating from 1986 to 1992, most of which were offences involving violence such as armed robbery and gang robbery. The court also accepted that the present offence was serious and that it was pre-planned and that it occurred in prison. The court also accepted that a prison is a place of rehabilitation and not to commit further crimes, and yet the law did not consider or sufficiently consider public interest. In a case of this nature, the first and foremost consideration is the public interest. On the facts and circumstances of this case, public interest demands a custodial sentence to commensurate with the offence. In the light of this, we ordered that the sentence of 10 years' imprisonment imposed on Ooi Wang San and the other three to take effect after they had served their present sentences for other offences.

Appeal allowed.

Reported by David Lai

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